

**Rule(s) Review Checklist Addendum**  
**(This form must be filled out electronically.)**

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-164**  
**Insurance agents, brokers and solicitors**

Date last reviewed: **August 10, 1999**

Current Reviewer: **JoAnne Gordon**

Date current review completed: **March 18, 2002**

Is this document being reviewed at this time because of a taxpayer or association request? (If “YES”, provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an “x” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Briefly describe the subject matter of the rule(s):**

**WAC 458-20-164 discusses the taxability of income received by insurance agents, brokers, and solicitors. The rule explains when a full-time life insurance agent is an employee for B&O tax purposes. The rule also discusses the special classification for certain managing general agents.**

**2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?



X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**The following Washington Tax Decisions explain that the term "gross commission received" includes amounts paid by a wholesale insurance broker when the broker alone is liable for commissions to retail brokers. This is true notwithstanding an industry practice whereby the retail broker collects the premium from the insured, retains an amount agreed upon with the wholesale broker, and forwards the remaining amount to the wholesale broker who retains a commission before forwarding the final amount to the insurer.**

- Det. No. 98-220, 18 WTD 306 (1999)
- Det. 98-219, 19 WTD 410 (2000)
- Det. No. 98-219R, 19 WTD 416 (2000)
- Det. No. 99-065ER, 20 WTD 323 (2001)

**Det. No. 99-065ER, 20 WTD 323 (2001) discusses how tax applies when an insurance agent sells both insurance and securities products.**

**Excise Tax Advisory 199.04.105 Persons Serving as Employee and Engaging in Business explains that a person who is an employee and, in a separate capacity, derives income from engaging in business activities for his or her own benefit is subject to the B&O tax with respect to such income. RCW 82.04.360 is clear in its application of the B&O tax upon income derived by persons engaging in business activities as an independent contractor. In addition, the ETA provides the example of the salaried branch manager of an insurance company who sold insurance policies in an independent capacity. This example does not reflect the special provisions for determining whether a life insurance agent is an employee or an independent agent.**

**3. Additional information:** Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**Subsection (5) discusses the special provisions for certain managing general agents. At such time as the rule is revised, consideration should be given to:**

- **Revising the reporting instructions for certain managing general agents. RCW 82.04.280(5) provides the rate of tax for such persons is 0.484 percent. The rule directs such persons to report on line 1 (extracting/extracting for hire) of the combined excise tax return because a small number of persons conduct business as managing general agent. Considering that the tax rate for insurance agents, brokers, and solicitors is the**



same as for certain general managing agents (approximately 28), it would make sense to combine reporting instructions for both classifications.

- Reviewing those requirements identified under (5)(b) to determine if they continue to apply for purposes of determining eligibility for claiming the special rate/reporting classification.
- Eliminating language indicating that persons who wish to claim the special rate/classification should request an application form from the Department. This form is no longer in use by the Department. In addition, such language is superfluous because the rate is the same as the rate for insurance agents, brokers, and solicitors.

**4. LISTING OF DOCUMENTS REVIEWED:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented:

Interpretive statements (e.g., ETAs and PTAs): **Excise Tax Advisory 199.04.105 Persons Serving as Employee and Engaging in Business**

Court Decisions:

Board of Tax Appeals Decisions (BTAs):

Administrative Decisions (e.g., WTDs):

- **Det. No. 98-220, 18 WTD 306 (1999).** A wholesale insurance broker who alone has the contractual right to commissions from the insurer may not deduct amounts retained as commission by a retail broker.
- **Det. 98-219, 19 WTD 410 (2000).** A wholesale marine insurance broker who alone has the contractual right to receive commission income from the insurer may not deduct amounts retained as commission by retail broker who collects insurance premiums from the customer. While insurance companies contemplated retail brokers would share in commission, the retail broker is entitled to commission only by virtue of its agreement with the wholesale broker not the insurer.
- **Det. No. 98-219R, 19 WTD 416 (2000).** Sustains Det. 98-219, 19 WTD 410 (2000).
- **Det. No. 95-029, 19 WTD 739 (2000).** Determines the taxability of insurance products, securities, fixed annuities, and variable annuities sold by a certified financial planner. Insurance products and nonvariable annuities included in the licensed activities of insurance agents are taxable under the B&O tax classification for insurance agents. Income from investment advisory services and usual variable annuities (primarily a securities product) is taxable under the financial business services classification (a subsequently repealed B&O tax classification).
- **Det. No. 99-065ER, 20 WTD 323 (2001).** A wholesale insurance broker who alone has the contractual right to commissions from the insurer may not deduct amounts retained as commission by a retail broker. Commission income received by a licensed surplus



**line broker is taxable under the B&O tax classification for insurance agents and brokers.**

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

#### **RCW 48.05.310 General agents, managers-Appointment-Powers-Licensing**

##### **4. Review Recommendation:**

- |               |  |
|---------------|--|
| <u>  X  </u>  | <b>Amend</b>   |
| <u>      </u> | <b>Repeal</b> (Appropriate when repeal is not conditioned upon another rule-making action.)  |
| <u>      </u> | <b>Leave as is</b> (Appropriate even if the recommendation is to incorporate the current information into another rule.)                 |
| <u>      </u> | <b>Begin the rule-making process for possible revision.</b> (Applies only when the Department has received a petition to revise a rule.) |

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

**WAC 458-20-164 should be revised to reflect recent determinations discussing "gross commissions received." Any revision to the rule should also address how tax applies when an insurance agent sells investment products in addition to the sale of insurance products. The rule's discussion about the reporting responsibilities of managing general agents should also be revised. At such time as this rule is revised, the drafter should, at the same time, consider revising WAC 458-20-163 so that its format is consistent with that currently in use. There is no pressing need to revise WAC 458-20-163, however, the subject matters are similar and both could be revised concurrently.**



**5. Manager action:** Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

\_\_\_\_\_ 1  
\_\_\_\_\_ 2  
\_\_\_\_\_ 3  
\_\_\_\_\_ 4